IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

CRL.A.No. 18 of 2001

ST.933/1999 of JUDL.MAGISTRATE OF FIRST CLASS COURT, CHITTUR

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APPELLANT/COMPLAINANT:

SANTHOSHKUMAR
S/O AMMALKUTTY
DEVANKAPURAM
CHITTUR

BY ADV. SRI.P.VIJAYA BHANU
SRI.T.A.UNNIKRISHNAN

RESPONDENTS:

1. AZHAKIRI
   S/O AYYAVUCHETTIAR,
   TELUMKU THERUVU,
   CHITTUR

2. VELAMMAL
   W/O AZHAKIRI
   ELUMKU THERUVU
   CHITTUR

3. STATE OF KERALA
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA
   ERNAKULAM

BY PUBLIC PROSECUTORSRI.C.M.NAZAR
SRI.RAJESH SIVARAMANKUTTY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.A.No.18 OF 2001

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Dated this the 10th day of December 2007

JUDGMENT

Appellant is the complainant. He had filed the complaint against respondents 1 and 2 herein alleging that they had committed offence punishable under Section 417 IPC by issuing Ext.P1 cheque making him believe that there was money in the account to discharge the liability of Rs.27,000/- borrowed by accused No.1 from him. When the cheque was presented, it turned out that the account from which Ext.P1 cheque was issued stood in the name of accused No.2 and also that the said account had been closed way back in the year 1989.

2. According to the complainant, the cheque was issued on November 26, 1998 towards repayment of a sum of Rs.27,000/- borrowed from him on October 1, 1998. The learned Magistrate found that the evidence of PW1, the complainant and PW2 his witness, could not be believed and that the prosecution had failed to prove the charge under Section 417 IPC. Accordingly, the accused were acquitted. Hence this appeal against the above order of acquittal.

3. As mentioned earlier, PW1, the complainant had alleged that respondent No.1/accused No.1 had borrowed a sum of Rs.27,000/- from him on October 1, 1998 with the promise that he would repay it within two months. When demand was made for repayment, accused No.1 directed the complainant to go to his residence. At that time, accused No.1 asked his wife (A2) to take a cheque leaf. When accused No.2 brought the cheuqe leaf, accused No.1 signed it in front of the complainant as well as PW2. When the said cheuqe (Ext.P1) was presented for encashment, it was returned with the endorsement “signature differs”. On enquiry, the complainant came to know that the said account from which Ext.P1 cheque was issued had been opened in the name of accused No.2 and it was closed in the year 1989 itself.

4. PW2 was examined on the side of the complainant to prove the transaction between him and accused No.1. PW2 stated before the court that he had accompanied accused No.1 to the residence of PW1 as requested by the former. He had seen

the complainant handing over the money to accused No.1. In cross examination, PW2 further admitted that accused No.2 had no involvement in the money transaction between the complainant and accused No.1 though she had accompanied accused No.1. He used to advance money to PW1 who was acquainted with him. He further stated that accused No.1 had never borrowed money from him. To a specific suggestion put to him in cross examination whether a blank cheque had been handed over to him by accused no.1 in connection with another money transaction, PW2 stated that he had not misused any such cheque leaf.

5. It is contended by learned counsel for the appellant that the learned Magistrate had committed serious illegality and irregularity in acquitting the accused. She contends that the evidence of PW1 was corroborated by that of PW2 on all material aspects. PW2 had stated that he had seen PW1 handing over the money to accused No.1. The evidence of PW1 that Ext.P1 cheque was signed by accused No.1 in his presence had not been

controverted by the accused in any manner known to law. Therefore, the money transaction having been proved satisfactorily and the cheque which was issued by accused No.1 after making the complainant believe that it was from his own account, having been dishonoured, it was a clear case to cheating, it is contended by learned counsel.

6. I have been taken through the depositions of PWs 1 to 4 who were examined on the side of the complainant. Of course, the evidence of PW3 and 4 may not be of much relevance. They were Bank Managers who spoke about the presentation and dishonour of the cheque in question. Reference has already been made to the evidence of PW2. In cross examination, PW1 had stated that PW2 was a financier and he was a close family friend. But curiously PW2 stated that he was neither a financier nor a family friend of PW1. But at the same time PW2 had admitted that he used to “arrange” finance for his acquaintances as a friend. The specific case of the accused was that PW2 who is a financier, had misused the cheque leaf which was handed over

to him in connection with another financial transaction.

7. The crucial question that has to be decided in this appeal is whether the ingredients of cheating have been established in the case. It may be noticed that the case of the complainant was that he had handed over the money to accused No.1 on October 1, 1998. PW1 did not have a case that he had asked for any acknowledgment, voucher etc. at the time when the money was given. PW1 stated that money was given to accused No.1 only on the oral assurance given to him that it would be returned within two weeks. Admittedly, even according to PW1, Ext.P1 cheque was issued to him in discharge of the alleged liability only after about two months of making the payment. PW1 did not have a case that he had parted with the money because of any inducement. The cheque was admittedly issued with the promise that it would be honoured when presented. Dishonour of a cheque, for whatever reason, may not always attract the offence of cheating.

Having regard to the entire facts and circumstances, I am

not satisfied that interference is warranted with the order of acquittal passed by the learned Magistrate. Even assuming that the accused might have induced the complainant to part with the money, it cannot be said that the prosecution had succeeded in proving the case that the cheque was issued by accused No.1. making the complainant believe that it was drawn on his own account. As mentioned earlier, the cheque was dishonoured with the endorsement “signature differs” and “account closed”. No evidence was adduced by the complainant to prove that accused No.1 had signed the cheque and that it was his signature. Learned counsel for the accused has invited my attention to a decision in **Muraleedharan V. Vijayakumar [2006 (4) KLT 342]** in this context. The principle laid down in the above judgment has no application to the facts available in this case. Appeal fails and it is accordingly dismissed.

(A.K.BASHEER, JUDGE)

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